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10 **BEFORE THE**
11 **BOARD OF REGISTERED NURSING**
12 **DEPARTMENT OF CONSUMER AFFAIRS**
STATE OF CALIFORNIA

13 In the Matter of the Accusation Against:

Case No. 2009-14

14 **SICILY ALICE KERSTETTER**
P. O. Box 686
15 Junction City, AR 71749

ACCUSATION

16 **Registered Nurse License No. 604817**

17 Respondent.

18 Complainant alleges:

19 **PARTIES**

20 1. Ruth Ann Terry, M.P.H., R.N. ("Complainant") brings this Accusation
21 solely in her official capacity as the Executive Officer of the Board of Registered Nursing,
22 Department of Consumer Affairs.

23 2. On or about August 19, 2002, the Board of Registered Nursing ("Board")
24 issued Registered Nurse License Number 604817 to Sicily Alice Kerstetter ("Respondent"). The
25 license was in full force and effect at all times relevant to the charges brought herein and expired
26 on February 28, 2006.

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JURISDICTION

3. Section 2750 of the Business and Professions Code ("Code") provides:

Every certificate holder or licensee, including licensees holding temporary licenses, or licensees holding licenses placed in an inactive status, may be disciplined as provided in this article [Article 3 of the Nursing Practice Act (Bus. & Prof Code, § 2700 et seq.)]. As used in this article, "license" includes certificate, registration, or any other authorization to engage in practice regulated by this chapter. The proceedings under this article shall be conducted in accordance with Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code [the Administrative Procedure Act], and the board shall have all the powers granted therein.

4. Code section 2764 provides:

The lapsing or suspension of a license by operation of law or by order or decision of the board or a court of law, or the voluntary surrender of a license by a licensee shall not deprive the board of jurisdiction to proceed with any investigation of or action or disciplinary proceeding against such license, or to render a decision suspending or revoking such license.

STATUTORY PROVISIONS

5. Code section 2761 provides, in pertinent part:

The board may take disciplinary action against a certified or licensed nurse or deny an application for a certificate or license for any of the following:

(a) Unprofessional conduct . . .

....

(f) Conviction of a felony or of any offense substantially related to the qualifications, functions, and duties of a registered nurse, in which event the record of the conviction shall be conclusive evidence thereof.

6. Code section 2762 provides, in pertinent part:

In addition to other acts constituting unprofessional conduct within the meaning of this chapter [the Nursing Practice Act], it is unprofessional conduct for a person licensed under this chapter to do any of the following:

....

(b) Use any controlled substance as defined in Division 10 (commencing with Section 11000) of the Health and Safety

1 Code, or any dangerous drug or dangerous device as defined in
2 Section 4022, or alcoholic beverages, to an extent or in a manner
3 dangerous or injurious to himself or herself, any other person, or
4 the public or to the extent that such use impairs his or her ability
5 to conduct with safety to the public the practice authorized by his
6 or her license.

7 (c) Be convicted of a criminal offense involving the
8 prescription, consumption, or self-administration of any of the
9 substances described in subdivisions (a) and (b) of this section,
10 or the possession of, or falsification of a record pertaining to, the
11 substances described in subdivision (a) of this section, in which
12 event the record of the conviction is conclusive evidence thereof.

13 7. Code section 125.3 provides that the Board may request the administrative
14 law judge to direct a licensee found to have committed a violation or violations of the licensing
15 act to pay a sum not to exceed the reasonable costs of the investigation and enforcement of
16 the case.

17 **FIRST CAUSE FOR DISCIPLINE**

18 **(Criminal Convictions)**

19 9. Respondent's license is subject to discipline under Code section 2761,
20 subdivision (f), in that Respondent was convicted of crimes substantially related to the
21 qualifications, functions or duties of a registered nurse, as follows:

22 a.. On or about June 29, 2005, in the case entitled, "*People v. Sicily*
23 *Alice Kerstetter*" (Super. Ct. Riverside County, 2005, No. INM155822), Respondent was
24 convicted by the court upon a plea of guilty of violating Vehicle Code section 23152,
25 subdivision (a), a misdemeanor. The circumstances of the crime are that on or about
26 March 6, 2005, Respondent drove a vehicle while under the influence of an alcoholic beverage
27 and/or a drug, or under the combined influence of an alcoholic beverage and a drug.

28 b. On or about January 7, 2004, in the case entitled, "*People v. Sicily*
29 *Alice Kerstetter*" (Super. Ct. Riverside County, 2004, No. INM140819), Respondent was
30 convicted by the court upon a plea of guilty of violating Vehicle Code section 23152,
31 subdivision (b), a misdemeanor. The circumstances of the crime are that on or about October 4,
32 2003, Respondent drove a vehicle with 0.08 percent or more, by weight, of
33 alcohol in her blood.

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1 M. G. noticed that Respondent's speech was slurred. Respondent consented to a saliva alcohol
2 test and a drug screen. M. G. administered two Q.E.D. Saliva Alcohol Tests, which reflected that
3 Respondent had a blood alcohol greater than 0.15 mg/dl and greater than 0.02 mg/dl. M. G. also
4 collected a urine specimen on the same date, at 11:05 a.m., which was forwarded to MedTox
5 Laboratories. M.G. summoned a taxi and sent Respondent home.


6 Respondent was offered enrollment in JFK's Employee Assistance Program and
7 Respondent chose to resign from her employment at JFK rather than enroll in the Employee
8 Assistance Program.

9 **PRAYER**

10 **WHEREFORE**, Complainant requests that a hearing be held on the matters
11 herein alleged, and that following the hearing the Board issue a decision:

- 12 1. Revoking or suspending Registered Nurse License Number 604817,
13 issued to Sicily Alice Kerstetter;
- 14 2. Ordering Sicily Alice Kerstetter to pay the reasonable costs incurred by
15 the Board in the investigation and enforcement of this case pursuant to Code section 125.3; and,
- 16 3. Taking such other and further action as deemed necessary and proper.

17 **DATED:** 7/1/08

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20 RUTH ANN TERRY, M.P.H., R.N.
21 Executive Officer
22 Board of Registered Nursing
23 Department of Consumer Affairs
24 State of California
25 Complainant
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